

No. 25-1687

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MARY BOYLE, ALEXANDER HOEHN-SARIC, AND RICHARD TRUMKA, JR.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; SCOTT
BESSENT, in his official capacity as Secretary of the Treasury; RUSSELL VOUGHT,
in his official capacity as Director of the Office of Management and Budget; PETER
A. FELDMAN, in his official capacity as Acting Chairman of the U.S. Consumer
Product Safety Commission,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland, Case No. 8:25-cv-01628
Hon. Matthew J. Maddox, District Judge

**BRIEF OF TWENTY-SEVEN MEMBERS OF CONGRESS AS *AMICI
CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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**STATEMENT REGARDING CONSENT TO FILE
AND SEPARATE BRIEFING**

Pursuant to Fed. R. App. P. 29(a)(2), undersigned counsel for *Amici Curiae* represents that counsel for all parties have consented to the filing of this brief.

Undersigned counsel for *Amici* certifies that a separate brief is necessary. *Amici* are the twenty-seven elected Members of Congress listed on the following pages, who have a strong interest in defending Congress's authority to enact removal protections for the boards and commissions of independent agencies like the Consumer Product Safety Commission. As Members of Congress, *Amici* provide distinct expertise regarding the history of Congress's reliance on this authority since the Constitution's adoption to empower independent agencies to fulfill their statutory charges.

LIST OF *AMICI CURIAE*

- | | |
|---|--|
| 1. Amy Klobuchar
Senator from Minnesota | 13. Jacky Rosen
Senator from Nevada |
| 2. Maria Cantwell
Senator from Washington | 14. Kirsten E. Gillibrand
Senator from New York |
| 3. Richard Blumenthal
Senator from Connecticut | 15. Richard J. Durbin
Senator from Illinois |
| 4. Debbie Wasserman Schultz
Representative of Florida | 16. Frank Pallone, Jr.
Representative of New Jersey |
| 5. Chris Van Hollen
Senator from Maryland | 17. Jan Schakowsky
Representative of Illinois |
| 6. Ben Ray Luján
Senator from New Mexico | 18. Sanford D. Bishop, Jr.
Representative of Georgia |
| 7. Ruben Gallego
Senator from Arizona | 19. Robin L. Kelly
Representative of Illinois |
| 8. Tammy Baldwin
Senator from Wisconsin | 20. Kevin Mullin
Representative of California |
| 9. Elissa Slotkin
Senator from Michigan | 21. Doris Matsui
Representative of California |
| 10. Edward J. Markey
Senator from Massachusetts | 22. Diana DeGette
Representative of Colorado |
| 11. Cory A. Booker
Senator from New Jersey | 23. Debbie Dingell
Representative of Michigan |
| 12. Tammy Duckworth
Senator from Illinois | 24. Yvette Clarke
Representative of New York |

- 25. Jennifer L. McClellan**
Representative of Virginia
- 26. Kathy Castor**
Representative of Florida
- 27. Norma J. Torres**
Representative of California

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INTEREST OF AMICI CURIAE¹

Amici Curiae are twenty-seven Members of Congress, who share the Court's interest in preserving the separation of powers. They have a strong interest in defending Congress's authority to enact the removal protections for the members of the Consumer Product Safety Commission ("CPSC") and the over thirty other multimember independent agencies created by Congress. *Amici* include Members of Congress who serve or have served on committees with jurisdiction over the independent agencies that Congress created to address crises impacting the American public and whose board members Appellants contend the President may remove without cause despite—and, in fact, directly contrary to—protections passed by Congress. *Amici* are familiar with the essential role that independent leadership plays in empowering these agencies to execute their missions.

In particular, *Amici* have a critical interest in the continued independence and effective functioning of the CPSC, whose independence Congress relies on to protect the American public from consumer products that pose an unreasonable injury risk to children and adults across the country. 15 U.S.C. § 2051(b)(1). *Amici's* predecessors created the CPSC after recognizing in 1972 that unsafe

¹ Counsel for *Amici* state that no counsel for a party authored this brief in whole or in part, and that no person other than *Amici* or its counsel made a monetary contribution to this brief. The Parties have consented to the filing of this brief.

consumer products caused an estimated 30,000 deaths and 29 million injuries per year in American homes. H.R. Rep. No. 92-1153, at 23 (1972). Congress found that the CPSC, as a single, independent agency, would be better positioned to protect the public from unsafe products than addressing products on an ad hoc basis through individual legislation. *Id.* at 23-24.

For over fifty years, the CPSC has delivered on its mission, working on a bipartisan basis to ensure public safety and confidence in consumer products. Since 2018, the CPSC has recalled over 2,200 products.² And last year alone, the CPSC ensured online retailers removed over 53,000 recalled or banned products from their websites.³ *Amici* seek to ensure that the CPSC retains the necessary independence to continue its work protecting *Amici*'s constituents.

SUMMARY OF ARGUMENT

Since the Constitution's adoption, Congress has exercised its constitutional authority to structure federal agencies and create multimember agencies whose board members are protected from removal without cause. This balance enables Congress to provide those agencies with a measure of independence while preserving the President's authority to appoint and remove board members who

² U.S. Consumer Prod. Safety Comm'n, *Recalls & Product Safety Warnings*, <https://www.cpsc.gov/Recalls>.

³ U.S. Consumer Prod. Safety Comm'n, *Operating Plan Fiscal Year 2025* at 16 (Feb. 25, 2025), <https://www.cpsc.gov/s3fs-public/FY-2025-Op-Plan-revised-02-25-25.pdf?VersionId=eoC76aLTUB8Bq.If8WV6gezkm9klj.1#page=19>.

fail to faithfully execute the laws. Throughout the nation’s history, Congress, the Executive, and the Supreme Court have all agreed that Congress possesses this authority—until President Donald J. Trump attempted to dismantle multimember agencies across the federal government by dismissing their board members and commissioners without cause, including Appellees Mary Boyle, Alexander Hoehn-Saric, and Richard Trumka, Jr. from the CPSC. Such efforts directly implicate *Amici*’s authority as elected Members of Congress to address crises facing the nation. *Amici* have an unparalleled interest in affirming Congress’s authority to enact removal protections for the CPSC and the over thirty other multimember independent agencies created by Congress.

The President’s actions contradict longstanding historical practice and Supreme Court precedent, which have repeatedly affirmed Congress’s authority to create multimember independent agencies. In 1935, the Supreme Court approved the multimember structure of the Federal Trade Commission (“FTC”) in *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935) and upheld Congress’s authority to enact removal protections for agency boards and commissions. During the ninety years that followed, the Court has repeatedly approved similar structures and removal protections, and Congress has relied upon that approval, creating over thirty multimember agencies, including the CPSC, based on that model. *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 204 (2020) (affirming the

legitimacy of “expert agencies led by a *group* of principal officers removable by the President only for good cause”) (emphasis in original); *Collins v. Yellen*, 594 U.S. 220, 250-51 (2021) (confirming the Court did not revisit *Humphrey’s Executor* in *Seila*).

Appellants would have this Court ignore or invalidate this binding precedent in order to profoundly expand the President’s authority and allow him to fire members of independent boards and commissions at will. The Supreme Court’s recent stay orders in this case (*Trump v. Boyle*, 145 S. Ct. 2653 (2025) (per curiam)) and *Trump v. Wilcox*, 145 S. Ct. 1415 (2025) (per curiam) did not alter the “recognized” exceptions to the President’s removal power. The Court instead explained that the “ultimate[]” decision on the merits is “better left for resolution after full briefing and argument.” *Wilcox*, 145 S. Ct. at 1415. Full briefing and development of the record here demonstrate the extent that Appellants’ radical position contradicts the express understanding of all three Branches over almost a century and would disrupt the foundation of nearly three dozen federal agencies. No justification exists for upsetting such deeply embedded precedent.

ARGUMENT

The Supreme Court places “great weight” on “[l]ong settled and established practice” in separation-of-powers cases, *NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014) (quoting *Okanogan v. United States*, 279 U.S. 655, 689 (1929)), because

“‘traditional ways of conducting government . . . give meaning’ to the Constitution.” *Mistretta v. United States*, 488 U.S. 361, 401 (1989) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610 (1952) (Frankfurter, J., concurring)). And “practice” remains “an important interpretive factor.” *Noel Canning*, 573 U.S. at 525 (collecting cases); *see also Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015).

The Constitution’s Necessary and Proper Clause vests Congress with the authority to create and structure multimember independent agencies to address “the various *crises* of human affairs.” *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) (emphasis in original). This includes Congress’s “broad” authority to “create” governmental “office[s]” and “commission[s].” *Buckley v. Valeo*, 424 U.S. 1, 134 (1976), *superseded by statute on other grounds*, *Bipartisan Campaign Reform Act of 2002*, Pub. L. No. 107-155, 116 Stat. 81 (2002).

Since 1789, Congress has exercised this authority to create boards and commissions whose members are removable only for cause in order to give those members the independence required to perform their duties while respecting the President’s authority to remove members who fail to faithfully execute the laws. More than two centuries of practice by Congress pursuant to the above-described framework affirm this authority. No legally relevant reason exists to discontinue it now.

I. All Three Branches Have Long Recognized that Congress Can Create Multimember Independent Agencies.

An unbroken line of historical practice and Supreme Court precedent evinces the recognition by Congress, the Supreme Court, and the Executive that the Constitution grants Congress the authority to create multimember independent agencies with for-cause removal protections.

A. Throughout Its History, Congress Has Exercised Its Authority to Protect Members of Independent Agency Boards and Commissions from At-Will Removal.

Since the Constitution's adoption, Congress has exercised its power to condition the President's removal authority, including when creating and structuring independent agencies. In 1789, Congress retained for-cause removal protections for territorial judges when it reenacted the Northwest Ordinance and transferred removal authority over territorial officials to the President. *An Act to Provide for the Government of the Territory Northwest of the River Ohio*, ch. 8, § 1, 1 Stat. 50, 51, 53 (1789). A year later, Congress ensured that the President had no authority to remove two of the five directors of the Federal Reserve's predecessor, the Sinking Fund Commission. *An Act Making Provision for the Reduction of the Public Debt*, ch. 47, § 2, 1 Stat. 186 (1790). And the following year, Congress protected all members of the First Bank of the United States from removal by the President for any cause. *An Act to Incorporate the Subscribers to the Bank of the United States*, ch. 10, § 4, 1 Stat. 191, 192-193 (1791). Congress

reaffirmed that protection in 1816, when it created the Second Bank of the United States and granted the President authority to remove only five of the twenty-five members of the Second Bank. *An Act to Incorporate the Subscribers to the Bank of the United States*, ch. 44, § 8, 3 Stat. 266, 269 (1816).

After the Civil War, Congress relied on the multimember independent agency model to address new crises arising in a modernizing America.

In 1887, Congress created the Interstate Commerce Commission to check the “growing power of the railroads over the American economy.” *Seila*, 591 U.S. at 275 (Kagan, J., dissenting in part and concurring in part); *Interstate Commerce Act*, Pub. L. No. 49-41, ch. 104, § 11, 24 Stat. 379, 383 (1887). Congress sought to preserve the Commission’s independence by providing that only three of the five members could be “appointed from the same political party” and that the President could remove its commissioners only for “inefficiency, neglect of duty, or malfeasance.” *Id.*

Wary of bestowing power to “unskilled or selfish hands,” Congress again relied on the multimember independent agency model in 1913 when it granted for-cause removal protection to the Board of Governors of the Federal Reserve Board. H.R. Rep. No. 63-69, at 28 (1913); *see Federal Reserve Act*, ch. 6, § 10, 38 Stat. 260-61 (1913). Congress reaffirmed the Federal Reserve Board members’ for-cause removal protection (*Banking Act of 1935*, Pub. L. No. 74-305, § 203(b), 49

Stat. 704-05 (1935)) when it granted the Board authority to set interest rates (*Banking Act of 1933*, Pub. L. No. 73-66, § 8, 48 Stat. 168 (1933)).

In 1914, Congress provided for-cause removal protection to the commissioners of the FTC, which Congress charged with preventing “unfair methods of competition in commerce.” *Federal Trade Commission Act*, ch. 311, § 5, 38 Stat. 719 (1914); *see id.* § 1, 38 Stat. 718. Congress provided the commissioners with for-cause removal protection to “ensur[e] ‘a continuous policy’ ‘free from the effect’ of ‘changing [White House] incumbency.’” *Seila*, 591 U.S. at 276 (Kagan, J., dissenting in part and concurring in part) (quoting 51 Cong. Rec. 10376 (1914)).

In 1934, in the midst of the Great Depression, Congress established two more multimember independent agencies with for-cause removal protections: the Securities and Exchange Commission⁴ and the National Mediation Board (45 U.S.C. § 154). The next year, the Supreme Court expressly approved for-cause removal protections in *Humphrey’s Executor*.

⁴ Although the statute creating the Securities and Exchange Commission does not include explicit for-cause removal protections, the Supreme Court has accepted that the members of the Commission enjoy such protection. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 487 (2010) (noting that “[t]he parties agree that the Commissioners cannot themselves be removed by the President except under the *Humphrey’s Executor* standard of ‘inefficiency, neglect of duty, or malfeasance in office’” (citation omitted)).

B. For the Last Ninety Years, the Supreme Court Has Continuously Held that Congress May Enact For-Cause Removal Protections for Members of Independent Agency Boards and Commissions.

The Supreme Court has long recognized that Congress can create independent agencies run by multimember boards or commissions appointed by the President, whose members the President may remove only for good cause.

Soon after the Founding, the Supreme Court confirmed that Congress could enact removal protections. Writing for a unanimous Court in *Marbury v. Madison*, 5 U.S. 137, 162 (1803), Chief Justice John Marshall observed without objection that some officers were “not removable at the will of the executive.”

Chief Justice Marshall also explained the basis for Congress’s authority to structure governmental entities in *McCulloch v. Maryland*, 17 U.S. 316 (1819), approving Congress’s creation of the Second Bank of the United States and detailing the Framers’ intent through the Necessary and Proper Clause to grant Congress “discretion, with respect to the means by which the powers it confers are to be carried into execution” so that the legislature can perform its duties “in the manner most beneficial to the people.” *McCulloch*, 17 U.S. at 421. The Constitution thus embodies the recognition that prescribing how Congress should “execute its powers” would be “unwise” and deprive the legislature of the flexibility to respond to future “exigencies” that the Framers may have “seen dimly,” if at all. *Id.* at 415. The Framers relied on the flexibility granted to

Congress to ensure the Constitution would “endure for ages to come” and “adapt[] to the various *crises* of human affairs.” *Id.* (emphasis in original).

In the midst of the Great Depression, the Supreme Court affirmed Congress’s then century-old practice of creating independent bodies whose members are not removable at will. Rejecting a challenge to Congress’s authority to protect FTC commissioners from removal without cause, the Court held that Congress’s broad power to create multimember independent agencies includes the “power to fix the period during which [commissioners] shall continue [in office], and to forbid their removal except for cause in the meantime.” *Humphrey’s Ex’r*, 295 U.S. at 629.

The Court recognized the fundamental role of removal protection in effecting Congress’s intent “to create a body of experts” who (1) “gain experience by length of service,” (2) “shall be independent of executive authority,” and (3) remain “free to exercise [their] judgment without the leave or hindrance of any other official or any department of the government.” *Id.* at 625-26. Congress determined “that length and certainty of tenure would vitally contribute” to accomplishing these objectives. *Id.* at 626. And the Court declined to “thwart” Congress’s efforts to cement the FTC’s independence. *Id.*

Following *Humphrey’s Executor*, the Supreme Court repeatedly reaffirmed the constitutionality of removal protections for multimember independent agencies.

See, e.g., Wiener v. United States, 357 U.S. 349, 353-54 (1958) (applying *Humphrey's Executor* to uphold the removal protections Congress gave to the War Claims Commission); *Morrison v. Olson*, 487 U.S. 654, 687-88 & n.28 (1988) (affirming that *Humphrey's Executor* remained good law, even though “the powers of the FTC . . . would at the present time be considered ‘executive,’ at least to some degree”); *Free Enter.*, 561 U.S. at 483 (declining to “reexamine” the precedent set in *Humphrey's Executor* “that Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will”); *Seila*, 591 U.S. at 204 (recognizing the exception to the President’s removal power established by *Humphrey's Executor* for “expert agencies led by a *group* of principal officers removable by the President only for good cause”) (emphasis in original); *Collins*, 594 U.S. at 250-51 (affirming that the Court did not revisit its prior decisions in *Seila*).

No merits opinion by the Supreme Court has questioned the continued application of *Humphrey's Executor* to “traditional independent agenc[ies] headed by a multimember board or commission.” *Seila*, 591 U.S. at 207. And this precedent has rendered “uncontroversial” “the constitutionality of [multimember] independent agencies, whose officials possess some degree of removal protection that insulates them from unlimited and instantaneous political control.” *Leachco*,

Inc. v. Consumer Prod. Safety Comm’n, 103 F.4th 748, 760 (10th Cir. 2024), *cert. denied*, 145 S. Ct. 1047 (2025); *see also Meta Platforms, Inc. v. Fed. Trade Comm’n*, 723 F. Supp. 3d 64, 86-87 (D.D.C. 2024) (detailing the history of Supreme Court cases affirming *Humphrey’s Executor* and stating that “this Court lacks authority (or reason) to disregard the Supreme Court’s holding in *Humphrey’s Executor* that the for-cause removal restriction contained in the FTC Act passes constitutional muster”).

C. Congress Has Created Over Thirty Multimember Independent Agencies in Reliance on *Humphrey’s Executor*.

In the ninety years since *Humphrey’s Executor*, Congress has enacted bills, signed by the President, that have created over thirty agencies with multimember independent leadership boards and commissions protected from at-will removal by the President.

Thirty-seven years after *Humphrey’s Executor*, Congress created the CPSC “in the image of other regulatory commissions which have been created by the Congress to regulate the essential industries of rail and air transportation, oil and gas production, communications, and the securities markets.” H.R. Rep. No. 92-1153, at 29.

Congress envisioned that an independent agency “as far removed as possible from partisan influence” would “better carry out [the CPSC’s] legislative and judicial functions . . . with the cold neutrality that the public has a right to expect of

regulatory agencies formed for its protection.” *Id.* at 24-25. Indeed, Congress intended that the CPSC’s “[i]ndependent status, and bi-partisan commissioners with staggered and fixed terms” would “provide greater insulation from political and economic pressures than is possible or likely in a cabinet-level department.” *Id.* at 25.

The Fifth Circuit affirmed last year that these features render the CPSC the “mirror image of the Federal Trade Commission” and the “institutional design” the Supreme Court approved in *Humphrey's Executor*. *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 91 F.4th 342, 346 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 414 (2024). The Tenth Circuit reached the same conclusion. *See Leachco*, 103 F.4th at 761 (“The CPSC is structured similarly to the FTC in *Humphrey's Executor*[.]”). And the Supreme Court has likewise expressed approval of the CPSC’s design. *See Morrison*, 487 U.S. at 692 n.31 (majority op.) (citing the CPSC’s removal restriction with approval); *see id.* at 724-25 (Scalia, J., dissenting) (same).

The CPSC is only one of the over thirty agencies that Congress created in reliance on *Humphrey's Executor* and its explicit authorization of statutorily created multimember agencies with removal protections to promote independence and expertise. As shown in the following table, listing multimember independent agencies that Congress created post-*Humphrey's Executor*, Congress has tasked

independent agencies with addressing the spectrum of the nation's most significant crises over the course of the last ninety years.⁵

⁵ Prior opinions have recognized many of the independent agencies listed below when detailing the long tradition of multimember independent agencies created by Congress. *See Free Enter.*, 561 U.S. at 541, 549 (Breyer, J., dissenting) (App. A); *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting) (listing a “sample” of the “independent agencies exercising substantial executive authority” with “multi-member commissions or boards”).

Purpose	Independent Agencies
Tackling Public Safety Issues (Eight Agencies)	<ul style="list-style-type: none"> • 1967 – National Transportation Safety Board, 49 U.S.C. § 1111(c);⁶ • 1970 – Occupational Safety and Health Review Commission, 29 U.S.C. § 661(b); • 1972 – Consumer Product Safety Commission, 15 U.S.C. § 2053(a); • 1976 – National Advisory Council on National Health Service Corps, 42 U.S.C. § 254j(b); • 1977 – Federal Mine Safety and Health Review Commission, 30 U.S.C. § 823(b)(1)(B); • 1984 – United States Institute of Peace, 22 U.S.C. § 4605(f); • 1990 – Chemical Safety Board, 42 U.S.C. § 7412(r)(6); and • 1996 – Federal Aerospace Management Advisory Council (previously the Federal Aviation Management Advisory Council), 49 U.S.C. § 106(p)(6)(E).
Addressing Civil Rights and Public Welfare Issues (Two Agencies)	<ul style="list-style-type: none"> • 1957 – Commission on Civil Rights, 42 U.S.C. § 1975(e) and 42 U.S.C. § 1975a; and • 1974 – Legal Services Corporation, 42 U.S.C. § 2996c(e).

⁶ The citations in the table reference the statutory for-cause removal protections enacted by Congress for each of these agencies.

Purpose	Independent Agencies
Protecting Workers and Promoting Labor Rights (Five Agencies)	<ul style="list-style-type: none"> • 1935 – NLRB, 29 U.S.C. § 153(a); • 1978 – MSPB, 5 U.S.C. § 1202(d); • 1978 – Federal Labor Relations Authority, 5 U.S.C. § 7104(b); • 1980 – Foreign Service Labor Relations Board, 22 U.S.C. § 4106(e); and • 1980 – Foreign Service Grievance Board, 22 U.S.C. § 4135(d).
Supporting Commerce and Addressing Economic Issues (Seven Agencies)	<ul style="list-style-type: none"> • 1936 – United States Maritime Commission, <i>Merchant Marine Act of 1936</i>, Pub. L. No. 74-835, 49 Stat. 1985 (1936);⁷ • 1961 – Federal Maritime Commission, 46 U.S.C. § 46101(b)(5); • 1970 – Postal Service Board of Governors, 39 U.S.C. § 202(e)(3); • 1970 – Postal Regulatory Commission, 39 U.S.C. § 502(a); • 1988 – National Indian Gaming Commission, 25 U.S.C. § 2704(b)(6); • 1995 – Surface Transportation Board, 49 U.S.C. § 1301; and • 2009 – Corporation for Travel Promotion, 22 U.S.C. § 2131(b)(2)(D); (b)(3).

⁷ The Federal Maritime Commission replaced the United States Maritime Commission in 1961.

Purpose	Independent Agencies
Promoting Justice and the Legal System (Three Agencies)	<ul style="list-style-type: none"> • 1984 – United States Sentencing Commission, 28 U.S.C. § 991; • 1984 – State Justice Institute, 42 U.S.C. § 10703(h); and • 2006 – General Services Administration: Civilian Board of Contract Appeals, 41 U.S.C. § 7105(b)(3).
Tackling Energy and Environmental Issues (Four Agencies)	<ul style="list-style-type: none"> • 1946 – Atomic Energy Commission, <i>Atomic Energy Act of 1946</i>, Pub. L. No. 585, 60 Stat. 755, 756-757 (1946);⁸ • 1974 – Nuclear Regulatory Commission, 42 U.S.C. § 5841; • 1976 – Regional Fishery Management Councils, 16 U.S.C. § 1852(b)(6); and • 1977 – Federal Energy Regulatory Commission, 42 U.S.C. § 7171(b)(1).
Addressing Issues Facing Members of the Military and Victims of War (Three Agencies)	<ul style="list-style-type: none"> • 1948 – War Claims Commission, <i>War Claims Act of 1948</i>, Pub. L. No. 80-896, 62 Stat. 1240 (1948);⁹ • 2000 – Department of Defense: Medicare-Eligible Retiree Health Care Board of Actuaries, 10 U.S.C. § 1114(a)(2)(A); and • 2008 – Department of Defense: Board of Actuaries, 10 U.S.C. § 183(b)(3).

⁸ The Energy Research and Development Administration and the Nuclear Regulatory Commission replaced the Atomic Energy Commission in 1974.

⁹ The War Claims Commission was a temporary agency that dissolved in 1954. *See Wiener*, 357 U.S. at 351.

The preceding table illustrates Congress’s wide-ranging and longstanding reliance on *Humphrey’s Executor*. Congress has repeatedly exercised its legislative power, with the flexibility the Framers intended, to create multimember independent agencies to address the full range of crises facing the nation.

Furthermore, Congress structured these agencies with the intention that their boards or commissions would exercise the agency’s powers with a measure of independence based on the authority to create for-cause removal protections exercised by the legislature since the Founding and the modern model approved by the Supreme Court in *Humphrey’s Executor*.

D. Precedent and Practice Support the Tradition of Multimember Independent Agencies Affirmed by *Humphrey’s Executor*.

There is no basis for disturbing the established precedent and longstanding practice undergirding Congress’s authority to create multimember independent agencies with removal protections, which include not only the CPSC, but also the Federal Reserve Board, the FTC, the Securities and Exchange Commission, and the National Mediation Board (all established before *Humphrey’s Executor*), and the other agencies outlined in Section I(C), *supra*.

Stare decisis has “special force when legislators or citizens ‘have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations.’” *Hubbard v. United States*, 514 U.S. 695, 714 (1995) (citation omitted). Congress, the Executive, and the Judiciary

have developed settled norms and understandings based on the multimember agency structure approved by *Humphrey's Executor*. Overruling that practice and precedent would upend those understandings and disrupt a century and half of legislation reflecting Congress's considered judgment on how to structure the nation's government.

Appellants urge the Court to repudiate precedent and hold that all boards and commissions of independent agencies must be removable by the President at will. Nothing in the Constitution supports this radical proposal. Nothing in continued congressional practice countenances it. And nothing in Supreme Court precedent requires it.

II. The Independence of the CPSC Plays a Critical Role in the Agency's Ability to Fulfill Its Congressional Mandate.

The CPSC requires independence to deliver on its congressional charge to ensure the safety of consumer products, from furniture to children's toys to refrigerators and protect the public from consumer products that pose unreasonable risks. 15 U.S.C. § 2051(b). Over the past half of a century, the CPSC has exercised its independence to fulfill this mission. Examples of the CPSC's public safety achievements include:

- An almost 80% decline in crib deaths from 1973 to 2018;
- A 43% decrease in residential fires, a 47% decrease in fire-related deaths, and a 41% decrease in fire-related injuries from 1980 to 2018;

- A reduction in baby walker-related injuries, from over 25,000 emergency room visits in 1992 to approximately 3,100 in 2020;
- A nearly 98% decrease in child deaths caused by entrapment and suffocation in refrigerators between 1997 and 2022, compared to 1973–1984;
- A 55% reduction in the injury rate associated with in-ground swimming pools and related equipment between 1979 and 2019; and
- A nearly 96% decrease in garage door-related child deaths since 1992, compared to 1982–1990.¹⁰

Congress prioritized the CPSC’s independence because its decisions would “necessarily involve a careful meld of safety and economic considerations,” and Congress believed that the CPSC should strike this “delicate balance . . . as far removed as possible from partisan influence.” H.R. Rep. No. 92-1153, at 25. The text of the Consumer Products Safety Act and its legislative history make clear Congress’s intent to ensure the integrity and vigilance of the CPSC by safeguarding the CPSC’s independence through removal protections for its members. To ensure the CPSC’s independence, Congress relied on the “traditional

¹⁰ See U.S. Consumer Prod. Safety Comm’n, *CPSC Celebrates 50 Years of Making Consumer Safety our Mission* (Mar. 16, 2022), <https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Celebrates-50-Years-of-Making-Consumer-Safety-our-Mission>.

requirements relating to the appointment and organization of independent regulatory agencies.” H.R. Rep. No. 92-1153, at 29. The CPSC’s five members are selected “on a bipartisan basis to serve for seven-year terms” to “promote evenhanded regulation.” *Id.* at 29; 15 U.S.C. § 2053(a), (b)(1), (c). And the President only has authority to remove members from the CPSC “for neglect of duty or malfeasance in office” to “properly isolate” them from “the whim[s] of the executive.” H.R. Rep. No. 92-1153, at 29; 15 U.S.C. § 2053(a).

Congress quoted Justice Sutherland’s opinion on behalf of the unanimous Supreme Court in *Humphrey’s Executor* to explain the importance of the removal protections: “[I]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter’s will.” H.R. Rep. No. 92-1153, at 29 (quoting *Humphrey’s Ex’r*, 295 U.S. at 629). As described by the commission created by Congress whose recommendations formed the basis of the Consumer Product Safety Act,¹¹ removal protections would empower the CPSC “to deal firmly and at

¹¹ Pub. L. No. 92-573, 86 Stat. 1207 (1972). In November 1967, Congress created the National Commission on Product Safety to study and investigate the adequacy of the protections for the public against unreasonable risk of injuries from consumer products. *See* H.R. Rep. No. 92-1153, at 22; Nat’l Comm’n on Prod. Safety, 76-606753, Final Report Presented to the President and Congress, forward (1970) (“NCPS Final Report”). President Lyndon B. Johnson appointed the seven members of the Commission, which after over two years of hearings and study, recognized the need for a dedicated independent agency to remedy the problems and inefficiencies created by Congress’s attempt to address product

arm's length with the industries it must regulate on behalf of the public.” NCPS Final Report at 5. And they would also provide the CPSC the “authority and ab[ility] to make firm commitments and decisions.” *Id.* at 6.

In sum, the removal protections and independence that Congress built into the CPSC ensures that it remains “unfettered by political dictates, self-interested industry pressure or blind consumer zeal.” 122 Cong. Rec. S15211 (daily ed. May 24, 1976) (statement by UAW Vice President Odessa Komer). They guarantee that the CPSC can fulfill its Congressional mandate.

CONCLUSION

Amici now occupy the seats of the thousands of their predecessors who have crafted and approved the structure of independent agencies in this nation for the past ninety years—in fact, since the Founding itself. They are particularly well situated to opine on the disruption of settled expectations and the affront to the separation of powers that Appellants’ arguments, if accepted, would entail.

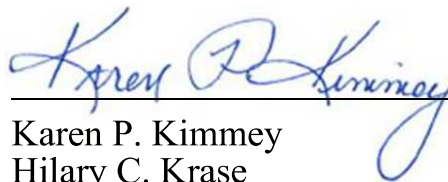
For those reasons and the reasons stated above, *Amici* urge that this Court affirm the judgment of the District Court.

safety issues with individual legislation because such efforts had only resulted in “a series of isolated acts treating specific hazards in narrow product categories” and a “hodgepodge of tragedy-inspired” state and local laws. NCPS Final Report, forward & at 2.

Dated: August 29, 2025

Respectfully submitted,

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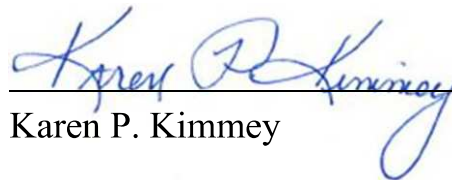
CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMIT

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,889 words, including the List of *Amici Curiae*. The word count excludes the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 29th day of August, 2025.

By: _____



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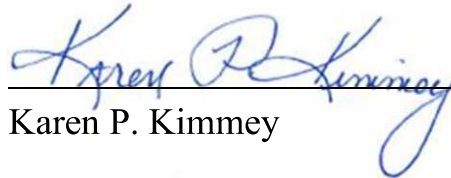
CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on August 29, 2025.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 29th day of August, 2025.

By:



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